

General Information Letter: Employer need not submit a Form IL-W-4 to IDOR for review unless 15 or more exemptions are claimed and the number of exemptions exceeds the number claimed on the federal Form W-4.

September 6, 2002

Dear:

This is in response to your letter to Brian Stocker of this office dated August 19, 2002. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, *2 Ill. Adm. Code Part 1200* regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state in part as follows:

The purpose of this letter is to get your legal opinion regarding the filing of W-4 exemptions, specifically the claiming of more exemptions than what is evidenced from our records...

I had an employee come to the Human Resources Department and request to complete a new W-4 Form. As he was completing the form I heard him say he was going to claim nine (9) exemptions, to which I said you don't have that many exemptions. He said how do you know how many exemptions I have, and I said I can look in your personnel file. His mind set is that he can complete a W-4 Form whenever he wants to and put down whatever he wants. My position has always been that an employee can change a W-4 Form when they have a qualifying event and then only within the legal limits.

The conversation then proceeded to a point where he said, "Get me something in writing that says I can't claim nine exemptions." I then told him to get me something in writing that says he can claim that number of exemptions. I showed him the sections which address W-4 Forms and filing fraudulent claims. I am not saying he is fraudulent, but I do not have any documentation which says he legitimately has nine allowances.

I understand that the stated practice is to supply information in writing when an employee claims ten or more exemptions, but I would feel better if I have something in writing that says he can or cannot make this claim rather than taking his word.

Illinois Income Tax Regulation Section 100.7110) covers this situation. Subparagraph (c)(1)(B) thereof states in part as follows:

(B) Internal Revenue Service notification. If an employer receives a notice from the Internal Revenue Service relative to a particular employee's withholding exemption certificate, which notice necessitates this employer treating such certificate as defective under (cite), then the employer shall withhold Illinois income tax from the employee as follows:

- (i) if the employee's Form IL-W-4 claims total exemption from Illinois withholding, on the basis of the maximum number of exemptions specified by the Internal Revenue Service in the notice, or
- (ii) if the employee's Form IL-W-4 claims a certain number of exemptions, on the basis of the number of exemptions thus claimed by the employee or on the basis of the maximum number of exemptions specified by the Internal Revenue Service in the notice, whichever is less.

As a consequence, an employer must follow any adjustment made to the Federal Form W-4.

Subparagraph (h) of that regulation provides as in part as follows:

- (h) Employer referral of certain Illinois exemption withholding certificates to the Department.

1) When required.

A) Any Illinois withholding exemption certificate meeting all of the following criteria must be referred by the employer to whom it is submitted to the Illinois Department of Revenue not later than the day on which the next quarterly return of withholding is due. The criteria for referral are:

- i) that the certificate claims more withholding exemptions than the previously effective withholding certificate,
- ii) that the certificate claims in excess of fourteen (14) exemptions, and
- iii) that the employer had no obligation to submit a simultaneously effective federal certificate to the Internal Revenue Service under (cite).

Thus, an IL-W-4 claiming fifteen (15) or more exemptions must be referred to the Department unless the same number of exemptions are claimed on the federal form. In this case however, even if the nine (9) exemptions seem excessive and even if that amount differs from the amount claimed on the Federal W-4 form, COMPANY may nevertheless rely on the information provided in the IL-W-4 form at issue. Illinois Income Tax Act Section 702. 35 ILCS 5/702.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

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Sincerely yours,

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